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**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/291,656	03/03/99	PETERS-GOLDEN	UM-03662

HM12/0728

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EXAMINER ROBINSON, P
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ART UNIT 1653	PAPER NUMBER 3
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DATE MAILED: 07/28/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application N .

09/291,656

Applicant(s)

PETERS-GOLDEN ET AL.

Examiner

Patricia A. Robinson

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

**Attachment(s)**

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 16) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 20) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

The Paper No. 2, filed 3/11/1999 has been received and entered. As requested in the Paper No. 2, claims 1-21 have been cancelled and claims 22-26 were examined.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102((e), f) or (g) prior art under 35 U.S.C. 103(a).

Claims 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. taken with Frazee et al.

Yamamoto et al. teaches that fact that leukotriene-B<sub>4</sub> (LTB<sub>4</sub>) and leukotrienes in general, plays a role in the immunologic defense against microbial infections. (See Abstract and page 528, first paragraph). Yamamoto et al. also teaches that the peptide leukotriene-C<sub>4</sub> is also involved in the immunologic response to infections. (See page 528, second paragraph). Lastly, Yamamoto et al. teaches that LTB<sub>4</sub> administered intraperitoneally in .2 ml of sterile liquid, increase the survival rate of hosts infected with methicillin-resistant Staphylococcus aureus by directly or indirectly regulating the immune system. (See page 528, Materials & Methods, and page 531). However, where Yamamoto et al. does not teach administration via the leukotriene in an aerosol form, Frazee et al. teaches that it is well known in the art that leukotrienes (LTB<sub>4</sub>, LTC<sub>4</sub>, LTD<sub>4</sub>, and LTE<sub>4</sub>) are involved in pulmonary infections and diseases. (See Abstract and col. 1, line 52 – col. 2, line 45). Frazee et al. also teaches administering the pharmaceutical at the organ site. (See col. 5, lines 3-10). Finally, Frazee et al. teaches that the pharmaceutical composition comprising a carrier or diluent and an effective amount of the active ingredient, and goes further to teach that these solutions can be aerosolized for inhalation. (See col. 15, line 65 – col. 16, line 30). Thus, where Yamamoto et al. teaches the use of LTB<sub>4</sub> as an anti-microbial agent, it would have been obvious to one of ordinary skill in the art to have modified Yamamoto et al. by using the teachings in Frazee et al., which references when combined teach all of claims 22-26. Therefore, the claimed invention was within the ordinary skill in the art to make and use at the time it was made and was as a whole, *prima facie*, obvious.

***Conclusion***


No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia A. Robinson whose telephone number is 703-305-0096. The examiner can normally be reached on 8:00 - 4:30 Monday - Friday, off alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 703-308-2923. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

PAR  
July 25, 2000

  
CHRISTOPHER S. F. LOW  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600